

108TH CONGRESS
2D SESSION

S. 2903

To provide immunity for nonprofit athletic organizations in lawsuits arising from claims of ordinary negligence relating to the passage or adoption of rules for athletic competitions and practices.

IN THE SENATE OF THE UNITED STATES

OCTOBER 6, 2004

Mr. LUGAR introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide immunity for nonprofit athletic organizations in lawsuits arising from claims of ordinary negligence relating to the passage or adoption of rules for athletic competitions and practices.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Nonprofit Athletic Or-
5 ganization Protection Act of 2004”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) Amateur Sports and education-based ath-
2 letics are an important part of our culture. Sports
3 provide a tremendous opportunity for the youth of
4 America to learn the skills of leadership, teamwork,
5 and discipline. Studies have shown that participation
6 in these activities is directly connected to academic
7 achievement and overall social development.

8 (2) Amateur athletics are integral to the good
9 health and overall well-being of American society.
10 Nonprofit organizations put forward their best ef-
11 forts to enact rules that are in the best interests of
12 young people. Injuries will occur as a result of the
13 inherent risks involved in sports. These risks, how-
14 ever, should not work to the detriment of the greater
15 good served by amateur athletics.

16 (3) Young people who participate in school
17 sports and other amateur competition have lower
18 levels of obesity.

19 (4) Young people who participate in sports tend
20 to be fitter adults, and suffer fewer health problems
21 as they age.

22 (5) Playing rules in amateur sports are nec-
23 essary to provide the opportunity for young people
24 to participate in age- and skill level-appropriate com-
25 petition.

1 (6) Sport involves intense physical activity. It
 2 also involves a certain element of danger. Rules
 3 making is anticipatory, and it involves tradeoffs and
 4 balancing acts. Rules makers must draw unambig-
 5 uous lines; they do not have the luxury of self-pro-
 6 tective vagueness. Given the large number of partici-
 7 pants and the risks inherent in sport, injuries cannot
 8 be avoided. By deciding to partake in competition,
 9 athletes assume such risks. Allowing lawsuits based
 10 merely on the good faith development of the rules is
 11 wrong and unfair.

12 (7) Rules makers have been the target of an in-
 13 creasing number of lawsuits claiming negligence due
 14 to the adoption, or failure to adopt, particular rules
 15 for amateur sports.

16 (8) Repeatedly defending claims will have a det-
 17 rimental impact on the ability of rules makers to
 18 continue to provide these services, and will discour-
 19 age the best and brightest coaches, officials, and ad-
 20 ministrators from serving on rules committees.

21 **SEC. 3. DEFINITIONS.**

22 In this Act:

23 (1) **ECONOMIC LOSS.**—The term “economic
 24 loss” means any pecuniary loss resulting from harm
 25 (including the loss of earnings or other benefits re-

lated to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(2) HARM.—The term “harm” includes physical, nonphysical, economic, and noneconomic losses.

(3) NONECONOMIC LOSS.—The term “noneconomic loss” means any loss resulting from physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(4) NONPROFIT ORGANIZATION.—The term “nonprofit organization” means—

(A) any organization which is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; or

(B) any not-for-profit organization which is organized and conducted for public benefit and operated primarily for charitable, civic,

1 educational, religious, welfare, or health pur-
2 poses.

3 (5) NONPROFIT ATHLETIC ORGANIZATION.—

4 The term “nonprofit athletic organization” means a
5 nonprofit organization that has as one of its primary
6 functions the adoption of rules for sanctioned or ap-
7 proved athletic competitions and practices. The term
8 includes the employees, agents, and volunteers of
9 such organization, provided such individuals are act-
10 ing within the scope of their duties with the non-
11 profit athletic organization.

12 (6) STATE.—The term “State” includes the
13 District of Columbia, and any commonwealth, terri-
14 tory, or possession of the United States.

15 **SEC. 4. LIMITATION ON LIABILITY FOR NONPROFIT ATH-**
16 **LETIC ORGANIZATIONS.**

17 (a) LIABILITY PROTECTION FOR NONPROFIT ATH-
18 LETIC ORGANIZATIONS.—Except as provided in sub-
19 sections (b) and (c), a nonprofit athletic organization shall
20 not be liable for harm caused by an act or omission of
21 the nonprofit athletic organization in the adoption of rules
22 for sanctioned or approved athletic competitions or prac-
23 tices if—

1 (1) the nonprofit athletic organization was act-
 2 ing within the scope of the organization's duties at
 3 the time of the adoption of the rules at issue;

4 (2) the nonprofit athletic organization was, if
 5 required, properly licensed, certified, or authorized
 6 by the appropriate authorities for the competition or
 7 practice in the State in which the harm occurred or
 8 where the competition or practice was undertaken;
 9 and

10 (3) the harm was not caused by willful or crimi-
 11 nal misconduct, gross negligence, or reckless mis-
 12 conduct on the part of the nonprofit athletic organi-
 13 zation.

14 (b) RESPONSIBILITY OF EMPLOYEES, AGENTS, AND
 15 VOLUNTEERS TO NONPROFIT ATHLETIC ORGANIZA-
 16 TIONS.—Nothing in this section shall be construed to af-
 17 fect any civil action brought by any nonprofit athletic or-
 18 ganization against any employee, agent, or volunteer of
 19 such organization.

20 (c) EXCEPTIONS TO NONPROFIT ATHLETIC ORGANI-
 21 ZATION LIABILITY PROTECTION.—If the laws of a State
 22 limit nonprofit athletic organization liability subject to one
 23 or more of the following conditions, such conditions shall
 24 not be construed as inconsistent with this section:

1 (1) A State law that requires a nonprofit ath-
2 letic organization to adhere to risk management pro-
3 cedures, including mandatory training of its employ-
4 ees, agents, or volunteers.

5 (2) A State law that makes the nonprofit ath-
6 letic organization liable for the acts or omissions of
7 its employees, agents, and volunteers to the same ex-
8 tent as an employer is liable for the acts or omis-
9 sions of its employees.

10 (3) A State law that makes a limitation of li-
11 ability inapplicable if the civil action was brought by
12 an officer of a State or local government pursuant
13 to State or local law.

14 (d) NONAPPLICABILITY TO CERTAIN CLAIMS.—The
15 limitation on liability provided by subsection (a) does not
16 apply to an action or claim arising out of a Federal, State,
17 or local antitrust, labor, environmental, defamation,
18 tortious interference of contract law, or civil rights law,
19 or any other Federal, State, or local law providing protec-
20 tion from discrimination.

21 **SEC. 5. PREEMPTION.**

22 This Act preempts the laws of any State to the extent
23 that such laws are inconsistent with this Act, except that
24 this Act shall not preempt any State law that provides

1 additional protection from liability relating to the rule-
2 making activities of nonprofit athletic organizations.

3 **SEC. 6. EFFECTIVE DATE.**

4 (a) IN GENERAL.—This Act shall take effect on the
5 date of enactment of this Act.

6 (b) APPLICATION.—This Act applies to any claim for
7 harm caused by an act or omission of a nonprofit athletic
8 organization that is filed on or after the effective date of
9 this Act but only if the harm that is the subject of the
10 claim or the conduct that caused the harm occurred on
11 or after such effective date.

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